



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS TX 75202-2733

JUN 01 2010

**VIA CERTIFIED MAIL -**

**RETURN RECEIPT REQUESTED: 7007 2560 0002 7736 9353**

Eric F. Pastor  
Pastor, Behling & Wheeler, LLC  
2201 Double Creek Drive, Suite 4004  
Round Rock, TX 78664

Re: Gulfco Marine Maintenance Superfund Site, Freeport, Texas  
Amended Unilateral Administrative Order, CERCLA Docket No. 06-05-05A  
Final Baseline Ecological Risk Assessment Problem Formulation and Final  
Baseline Ecological Risk Assessment Work Plan & Sampling and Analysis Plan

Dear Mr. Pastor:

By this letter, the United States Environmental Protection Agency (EPA) is notifying Respondents of non-compliance with the Amended Unilateral Administrative Order (UAO) for Remedial Investigation and Feasibility Study (RI/FS), CERCLA Docket No. 06-05-05A, for the Gulfco Marine Maintenance Superfund Site located at 906 Marlin Avenue in Freeport, Brazoria County, Texas (Gulfco Site). The PRP Group is in noncompliance with two deliverables, the Final Baseline Ecological Risk Assessment (BERA) Problem Formulation and the Final BERA Work Plan and Sampling and Analysis Plan.

The due date for the submittal for the Final BERA Problem Formulation (PF) was May 10, 2010. The submitted Final BERA PF submitted on May 10, 2010, is deficient in addressing EPA's comments outlined in EPA's April 14, 2010, comment letter as required by Task VII: Risk Assessment Paragraph 37(d)(xi) and (xii) of the Statement of Work for the Amended UAO for RI/FS.

The due date for the submittal for the BERA Work Plan (WP) & BERA Sampling and Analysis Plan (SAP) was May 10, 2010. The submitted Final BERA WP & SAP submitted on May 10, 2010, is deficient in addressing EPA's comments outlined in EPA's April 14, 2010, comment letter as required by Task VII: Risk Assessment Paragraph 37(d)(xiii) of the Statement of Work for the Amended UAO for RI/FS. In addition, the BERA WP & SAP is a component of RI/FS Sampling and Analysis Plan (RI/FS SAP). Because the BERA WP & SAP is deficient, the Potentially Responsible Party (PRP) Group is also in violation of Task III RI/FS SAP of the Statement of Work for the Amended UAO for RI/FS.

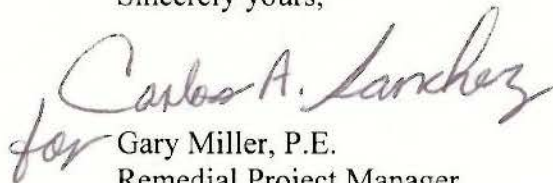


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The EPA would like to stress that your conduct constitutes a violation of the Amended UAO for RI/FS and that Respondents must take immediate actions to ensure compliance with the terms of the Amended UAO. The EPA is enclosing a memo outlining the deficiencies of the PRP's Responses to EPA comments on the BERA PF and BERA WP & SAP that must be addressed and incorporated into the Final BERA WP and Final BERA WP & SAP. The corrections must be made and submitted to EPA **within fourteen (14) days** of receipt of this letter in order for Respondents to come into compliance with the Amended UAO. If the deficiencies are not corrected, EPA may determine that your failure to perform the required activities constitutes a continuing event of non-compliance and may subject Respondents to the assessment of civil penalties, pursuant to Section 106(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), of \$37,500 for each day that such failure to comply continues since the May 10, 2010, due date. In addition, EPA may opt to take over that portion of the Remedial Investigation work required under the Amended UAO and complete the work as well as possibly pursue civil penalties for noncompliance with the Amended UAO for RI/FS.

I encourage Respondents to review EPA's attached listed deficiencies, correct the listed deficiencies, incorporate the corrections in the Final BERA PF and Final BERA WP & SAP, and submit the corrected Final BERA PF and Final BERA WP & SAP to EPA within 14 days. If you have any questions concerning this matter, please contact me at (214) 665-8318.

Sincerely yours,

  
for Gary Miller, P.E.  
Remedial Project Manager

Enclosure

cc: Luda Voskov (TCEQ)  
Susan Roddy  
Barbara Nann

**Comments on the PRP's Responses to EPA Comments on the BERA Problem Formulation and Work Plan/SAP**

1. Responses to Comments # 3,10,30,33,34,43,48,51,54,62,and 68 where the response is that no soil toxicity testing is proposed for soil invertebrates. Soil toxicity testing for soil invertebrates shall be proposed. Regarding proposal of soil toxicity testing, in particular, see EPA's comment #30 where it is stated that regardless of a pending soil removal on the soils North of Marlin Av, soil invertebrate toxicity testing shall be proposed, and then, if the removal action does occur, modification to the Work Plan/SAP can be made.
2. Response to Comments #7, 31, and 55; Specific details were not found in the text (Section 3) nor in Table 1 of the Work Plan/SAP (as per EPA comments) regarding type 1 error statistical statements/null hypotheses statements. This information shall be provided.
3. Response to Comment #11: The words "consideration of background metals concentrations" was not removed from the executive summary page v. Metals did not remain in the Problem Formulation. This shall be addressed including sampling for zinc.
4. Response to Comment #15: Regarding the decision on metals related to background, EPA's comment was not (and shall be) addressed especially regarding zinc (see page 8). Thus, for the toxicity testing, the additional sample locations EWSED 08 and EWSED 09 from Table 2 of the Work Plan/SAP shall include sampling for zinc.
5. Response to Comments #17, and 45: More detailed explanation shall be provided in the text than found on page 16 regarding the concentration ranges to be sampled for each contaminant. It was noted that Table 2 or the Work Plan/SAP did have notations that samples would be collected in areas where there were no hazard quotient exceedances. Additional sample locations shall be proposed for the toxicity testing to capture the zinc gradient. These shall include: SB202 (soil location where zinc was measured at 5640 mg/kg), EWSED 08 and EWSED09 (the additional wetland sediment sample locations added to Table 2 of the Work Plan/SAP and mentioned above), NF4SE13 (wetland sediment location where zinc was measured at 903 mg/kg), SPSE03 (pond sediment location where zinc was measured at 999 mg/kg), and 4WSED3 (wetland sediment where zinc was measured at 290J mg/kg). The text shall also include the sample ID and range of concentrations each for the locations where sampling LPAHs, HPAHs, and TPAHs, metals (zinc), and pesticides (4,4-DDT and endrin aldehyde, and endrin ketone) will be conducted in conjunction with the toxicity testing.
6. Response to Comment #32: No specific discussion was found regarding use of toxicity tests for determining site-specific NOAELs or LOAELs as per EPA's

comment. It appeared on page 17 that only a comparison of site to background toxicity tests would be conducted. Plus, there was no discussion found in Section 3 regarding a methodology for determining PRGs. Both discussions of site-specific NOAEL and LOAEL estimations from the site-specific toxicity tests, and the method of PRG determination shall be provided.

7. Response to Comment #47: Neither the proposed depth nor rationale was provided for the *Neanthes* polychaete toxicity test in consideration of its burrowing behavior. This information shall be provided. And, Figure 7 (mentioned in the Response to Comments) shall indicate the sample depths specific for each toxicity test (and related sampling) by sample location.
8. Response to Comment #53: Section 3.5 (page 16, third paragraph) contains language regarding sample locations focusing where HQs >3. Instead, the language for sample locations shall be focused on where HQs >1, and the reference to HQ >3 shall be deleted.
9. Response to Comment # 61: Ninety instead of 60 days were proposed. Sixty days is the requirement.
10. Response to Comment #65: Completeness was required to be 100%, yet 95% was the response. Data completeness shall be 100% for surface water.